

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

Iowa Code chapter 101 establishes the authority of the State Fire Marshal to establish requirements for the safe transportation, storage, handling and use of flammable and combustible liquids, which include motor vehicle fuels such as gasoline, “traditional” ethanol (90% gasoline, 10% ethanol) and higher blends of ethanol, including E-85. 661—subrule 221.4(2) governs the dispensing of ethanol blended fuels. Generally, dispensers used for motor vehicle fuels are required to be “listed” by an independent testing laboratory for use with the fuel dispensed. However, there has not, until recently, been a dispenser available which was listed for use with E-85, and provisions for the use of other dispensers, with additional monitoring requirements, were included in subrule 221.4(2).

Iowa Code section 455G.31 requires the State Fire Marshal to monitor the potential availability of one or more dispensers listed for use with E-85 and to issue an order regarding the use of listed dispensers once they have become commercially available. Last fall, the State Fire Marshal was notified of the commercial availability of two dispensers listed for use with E-85 and issued an order regarding the use of such dispensers, as required by Iowa Code section 455G.31. The order carries out specific requirements specified in Iowa Code section 455G.31: 60 days after the issuance of the order, any new dispensers installed for use with E-85 must be listed for this use, and four years after the issuance of the order, E-85 may be dispensed only from dispensers listed for use with E-85.

The order issued by the State Fire Marshal was followed by an amendment to the administrative rules, which was Adopted and Filed Emergency and published in the December 15, 2010, Iowa Administrative Bulletin as **ARC 9283B** and which established requirements for dispensing E-85 that are consistent with the order. The emergency amendment also addressed another issue related to the dispensing of ethanol-blended gasoline by defining “E-10” as a motor vehicle fuel which is a blend of petroleum and ethanol containing no more than 16 percent ethanol. This change in the definition of E-10 facilitates the dispensing of blends of petroleum and ethanol higher than 10 percent ethanol, which are the subject of recent and prospective regulatory action by the federal Environmental Protection Agency.

At the same time that the emergency amendment was filed, a Notice of Intended Action was also submitted, which proposed an amendment to the rules identical to that contained in the Adopted and Filed Emergency rule making and which provided an opportunity for public comment. The Notice of Intended Action was published in the December 15, 2010, Iowa Administrative Bulletin as **ARC 9289B**. A public hearing was held on January 4, 2011. Comments were received from representatives of the Petroleum Marketers and Convenience Stores of Iowa, the Iowa Renewable Fuels Association and the American Petroleum Institute.

This Adopted and Filed rule making reflects the following changes to the amendments to subrule 221.4(2), which were Adopted and Filed Emergency in **ARC 9283B** and proposed as a Notice of Intended Action in **ARC 9289B**: The definition of “listed,” because it is used widely, has been removed from subrule 221.4(2), which relates to the dispensing of biofuel blends, and has been added in Item 1 to rule 661—221.2(101), which provides definitions for the entire chapter. Where the term “retail dealer” was previously used in subrule 221.4(2), the term “owner or operator” has been substituted. This change was suggested by the Petroleum Marketers and Convenience Stores of Iowa for clarity. Finally, an option (subparagraph (5) under 2202.7.1.1.3 in subrule 221.4(2)) has been added to the conditions under which blends of biodiesel fuel containing between 6 and 20 percent biodiesel may be dispensed when a dispenser listed by an independent testing laboratory is not used. This option provides that dispensing may take place when insurance coverage is in place and the owner or operator is able to document the coverage. This option was requested by the Petroleum Marketers and Convenience Stores of Iowa and was endorsed by the Iowa Renewable Fuels Association.

In order to incorporate the amendments that were previously Adopted and Filed Emergency and the changes that were made to the Emergency as described above, Item 2 rescinds subrule 221.4(2) and adopts a new subrule 221.4(2).

In addition, in new Item 1, definitions of “approved by the fire marshal” and “independent testing laboratory” have been added to rule 661—221.2(101) for clarity. In this case, “approved by the fire marshal” refers solely to approval of independent testing laboratories. The two definitions were added to clarify who may list equipment which satisfies the requirements of the fire marshal. A definition of “diesel fuel” has also been added to clarify what blends of diesel fuel may be dispensed from dispensers listed for use with regular diesel fuel, consistent with content requirements adopted by the Iowa Department of Agriculture and Land Stewardship.

Comments received from the Petroleum Marketers and Convenience Stores of Iowa are reflected in the description of changes above. Comments received from the American Petroleum Institute advocated against allowing dispensers currently allowed for use with blends of ethanol and gasoline up to 10 percent ethanol to also be used with higher blends of ethanol, including ethanol blends up to E-15. The Fire Marshal concurs that the integrity of existing dispensers used with higher blends of ethanol is a significant concern. However, the previous rule allowed ethanol blends which are up to 15 percent ethanol to be dispensed using a dispenser listed for use with ethanol blends up to 10 percent ethanol, so the amendment to the rule allowing this same dispensing equipment to be used to dispense ethanol blends up to 16 percent ethanol is in essence a correction to the previous rule, intended to accommodate small variations in the percent of ethanol contained in ethanol sold as a 15 percent blend. No change has been made in response to the Institute’s comments.

These amendments are intended to implement Iowa Code sections 101.1 and 455G.31.

These amendments will become effective on September 1, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions of “Approved by the fire marshal,” “Diesel fuel,” “Independent testing laboratory” and “Listed” in rule **661—221.2(101)**:

“*Approved by the fire marshal*” means a laboratory which has requested and received recognition by the state fire marshal to test equipment whose use or installation is required by rules of the fire marshal, including rules in 661—Chapters 200 through 299, inclusive. A laboratory which seeks approval of the fire marshal shall contact the fire marshal division and shall provide information required by the fire marshal. Approval or disapproval shall be granted only by a letter from the fire marshal to the laboratory making the request, although advance notice of the decision of the fire marshal regarding whether or not approval is to be granted may be provided by electronic mail.

“*Diesel fuel*” means a liquid, other than gasoline, which is suitable for use as a fuel in a diesel fuel-powered engine and which meets the applicable standards established in Iowa Code section 214A.2 and rule 21—85.33(214A,208A). A blend of “diesel fuel” which meets these standards and contains 6 percent biodiesel or more is “biodiesel fuel.” Diesel fuel blends which meet these standards and contain less than 6 percent biodiesel are diesel fuel and not biodiesel fuel.

“*Independent testing laboratory*” means a laboratory recognized by the federal Occupational Safety and Health Administration as a nationally recognized testing laboratory or a laboratory approved by the state fire marshal.

“*Listed*” means listed or approved by an independent testing laboratory for a specific use. A product shall be considered to be listed if it is of a model which has been listed for the use to which it is being put, whether it was manufactured prior to or after the date on which the listing became effective.

ITEM 2. Rescind subrule 221.4(2) and adopt the following **new** subrule in lieu thereof:

**221.4(2)** Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

“*B-blend*” means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including between 6 and 20 percent biodiesel, as defined in Iowa Code section 214A.1.

NOTE: For purposes of the rules contained in this chapter and other chapters of rules of the state fire marshal (661—Chapters 200 through 299 inclusive), diesel fuel may contain biodiesel provided that the concentration of biodiesel is less than 6 percent in accordance with rule 21—85.33(214A,208A), which adopts by reference standards for the content of motor fuels established by ASTM International (formerly known as the American Society for Testing and Materials).

“E-10” means a blend of petroleum and ethanol including no more than 16 percent ethanol intended for use as a motor vehicle fuel.

“E-blend” means a blend of petroleum and ethanol including more than 16 percent ethanol intended for use as a motor vehicle fuel.

“Existing E-blend dispenser” means a dispenser installed on or before October 24, 2010, for use in dispensing E-blend.

2206.7.1.1.2 E-blend may be dispensed only if (1) or (2) applies:

(1) The dispenser is listed by an independent testing laboratory for use with E-blend or E-85.

(2) The dispenser is an existing E-blend dispenser and either (a) or (b) applies:

(a) The dispenser is listed by an independent testing laboratory as compatible with E-10 gasoline, and the owner or operator visually inspects the dispenser and the dispenser sump daily for leaks and equipment failure. The owner or operator shall maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the owner or operator and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(b) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline, and the owner or operator has installed an under-dispenser containment system with electronic monitoring.

NOTE: Option (2) will not be available after August 25, 2014. On or after August 26, 2014, E-blend will be allowed to be dispensed only from dispensers listed by independent testing laboratories for use with E-blend or E-85.

2206.7.1.1.3 B-blend may be dispensed only if (1) and either (2), (3), (4), or (5) apply:

(1) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

(2) The owner or operator shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the owner or operator and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(3) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the owner or operator has installed an under-dispenser containment system with electronic monitoring.

(4) Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

(5) The owner or operator of the dispenser has in force insurance for environmental liability in a minimum amount of \$500,000, which would cover damage resulting from the operation of the dispenser and the owner or operator is able to produce documentation of the insurance coverage upon request from the state fire marshal or the department of natural resources.

NOTE: If option (2), (4), or (5) is used, under-dispenser containment shall be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

This subrule is intended to implement Iowa Code sections 101.1 and 455G.31.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/27/11.